IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 198 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

O.L. OF SAURASHTRA IRON FOUNDARY & STEEL WORKS (P) LTD

Appearance:

1. INCOME TAX REFERENCE No. 198 of 1989
MRS.MONA BHATT, Advocate for MR MANISH R BHATT, Advocate for the Revenue
OFFICIAL LIQUIDATOR for the Respondent - Absent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 09/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question for the opinion of this Court under Section 256(2) of the Income Tax Act, 1961 :

"Whether the Tribunal has been right in law in holding that the issue regarding computation of relief u/s 80J of the I.T.Act, 1961 read with Rule 19A of the I.T.Rules, 1962 is debatable even after the retrospective amendment of the law and hence, the action u/s 154 of the I.T. Act, 1961 is not justified?"

2. The reference relates to the Assessment Years 1972-73 and 1973-74. The assessee had, in the relevant previous year to the A.Y. 1972-73, claimed deduction under Section 80J of the Act to the tune of Rs.20,885=00. For the A.Y. 1973-74, similar deduction under Section 80J was claimed by the assessee of Rs.76,815=00. Both these deductions were accepted by the Income Tax Officer as per the orders dated 27-2-1976.

3. In the rectification order dated 15-2-1979 for the A.Y. 1972-73, the I.T.O. observed that, on verification of the records, it was seen that the head office funds were borrowed capital and hence, were to be deducted alongwith the other liabilities from value of assets, and that, this had resulted into excess computation of capital employed . It was, therefore, held that the deduction of Rs.20,885=00 granted under Section 80J was improper and the amount was ordered to be added in the assessee's income. For the A.Y. 1973-74, the Income Tax Officer in his rectification order under Section 154, while observing that, "Head office is not a third party and credit balance in the name cannot be called borrowed capital", has held that the objection of the assessee was not acceptable and revised the total income by deducting the amount of Rs.76,815=00 which was earlier allowed by way of relief under Section 80J of the Act.

4. The Commissioner of Income Tax, dealing with a cluster of appeals including those relating to the above two Assessment Years, observed that the I.T.O. had allowed relief under Section 80J after deducting the value of the liabilities from the total assets. It was contended before the C.I.T. (Appeals) that the I.T.O. had allowed the relief under Section 80J after due

deliberation, following the decision in case of Century Enk Ltd. v. I.T.O. reported in 107 ITR 123. The Commissioner observed that, it was settled law that any mistake of law or facts can be rectified under Section 154 if it was apparent from the record, and that, in a case where the ground of mistake of fact was based on debatable facts and entailed detailed arguments with possibility of two opinions, no rectification would be warranted. As regards the aforesaid A.Ys. 1972-73 and 1973-74, the Commissioner noted that there was no mistake apparent from the record regarding allowance under Section 80J and development rebate.

4.1 The Tribunal, in the appeal preferred against the said order of the C.I.T. (Appeals), observed that the question was debatable and therefore, there was no rectification called for under Section 154. In other words, according to the Tribunal also, there was no mistake apparent from the record as regards the allowance under Section 80J of the Act.

5. It was contended on behalf of the Revenue that, under Rule 19A(3), from the aggregate of the amounts as ascertained under sub-rule (2), the aggregate of the amounts, as on the first day of the computation period, of borrowed moneys and debts owed by the assessee (including amounts due towards any liability in respect of tax) were required to be deducted. It was submitted that the I.T.O. had committed an error in not deducting the borrowed moneys of Rs.20,885=00 for the A.Y. 1972-73 and Rs.76,815=00 for the A.Y. 1973-74. It was submitted that, under section 80J of the Act, computation of deduction was required to be done in the manner prescribed by the Rules and therefore, since the borrowed moneys were not deducted as required by sub-rule (3) of Rule 19A, excess deduction came to be allowed under Section 80J to the assessee, which was required to be rectified and therefore, the I.T.O. was justified in passing the two rectification orders.

6. The assumption that the figures of Rs.20,885=00 in respect of the A.Y. 1972-73 and Rs.76,815=00 in respect of the A.Y. 1973-74, were the amounts of borrowed moneys entailed a detailed discussion on the basis of the records which were produced before the concerned authority and it has not been demonstrated before the C.I.T. (Appeals) or the Tribunal that there was any error apparent on the face of the record in the I.T.O. allowing these deductions on the ground that borrowed moneys were not deducted as required by sub-rule (3) of Rule 19A. Since the matter was debatable on facts

and it was not demonstrated from the record that any borrowed moneys were not deducted as required by sub-rule (3) of Rule 19A when the assessment was made, in our opinion, the Tribunal was right in holding that no rectification was called for under Section 154 of the Act. We therefore hold that the tribunal was right in holding that the issue regarding computation of relief under Section 80J of the Income Tax Act, 1961 read with Rule 19A of the Income Tax Rules, 1962 was debatable, and therefore, no action was called for under Section 154 of the Income Tax Act, 1961. The question referred to us is, accordingly, answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly, with no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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